

TAB E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACOB SMITH,)	Case No. 2:20-cv-03755
)	
Plaintiff,)	Judge Edmund A. Sargus
v.)	Magistrate Judge Kimberly A. Jolson
)	
FIRSTENERGY CORP., <i>et al.</i> ,)	
)	
Defendants.)	
)	
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JAMES BULDAS,)	Case No. 2:20-cv-03987
)	
Plaintiff,)	Judge Edmund A. Sargus
v.)	Magistrate Judge Kimberly A. Jolson
)	
FIRSTENERGY CORP., <i>et al.</i> ,)	
)	
Defendants.)	
)	
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BRIAN HUDDOCK and CAMEO)	Case No. 2:20-cv-03954
COUNTERTOPS, INC.,)	
)	Judge Edmund A. Sargus
Plaintiffs,)	Magistrate Judge Kimberly A. Jolson
)	
v.)	
)	
FIRSTENERGY CORP., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DECLARATION OF RICHARD M. KERGER IN SUPPORT OF AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD OF
INCENTIVE PAYMENTS TO CLASS REPRESENTATIVES**

I, RICHARD M. KERGER declare as follows:

1. I am an attorney licensed to practice in the State of Ohio, and am the sole member of The Kerger Law Firm, LLC (“Kerger Law”). I have personal knowledge of the facts stated in this Declaration and, if called as a witness, I would testify to them. I make this Declaration in support of Kerger Law’s request for attorneys’ fees and reimbursement of litigation expenses, as set forth in Class Plaintiffs’ Motion For Award of Attorneys’ Fees, Costs, And Incentive Awards To Class Representative Plaintiffs (ECF No. 145).

2. I am counsel of record in this case for plaintiffs Brian Hudock and Cameo Countertops, Inc.

3. A brief description my firm, which includes a short summary of my experience and credentials, is attached as Exhibit 1 and incorporated herein by reference.

4. Throughout the course of this litigation, my firm kept files contemporaneously documenting all time spent, including tasks performed, and expenses incurred, and shared those reports on a regular basis with Dennis E. Murray, Jr. and Marvin A. Miller, who are Class Counsel for the Settlement Class, along with James L. Ward, Jr.. *See* ECF No. 142 (preliminary approval order appointing Messrs. Murray, Miller, and Ward as Class Counsel). All the time and expenses reported by my firm advanced the tremendous class-wide result achieved in this case.

5. Such work included drafting pleadings, legal research, drafting briefs, participation in various conferences with co-counsel, clients, the Court and opposing counsel, reviewing discovery, preparing for and participating in mediation.

6. The schedule attached as Exhibit 2, and incorporated herein, is a summary of the amount of time spent by my firm’s partners, attorneys, and professional support staff who were involved in this litigation. It does not include any time devoted to preparing this Declaration or otherwise pertaining to the fee petition. The lodestar calculation is based on my firm’s billing rates

in effect at the time services were performed. Exhibit 2 was prepared from contemporaneous time records regularly prepared and maintained by my firm. Those records have been provided to Class Counsel, and I authorize them to be submitted for inspection by the Court if necessary. The hourly rates for my firm's partners, attorneys, and professional support staff included in Exhibit 2 were, at the time the work was performed, the usual and customary hourly rates charged for their services in similar complex litigation.

7. The total number of hours reasonably expended on this litigation by my firm from inception through July 31, 2022, which does not include time spent preparing this Declaration or preparing Class Plaintiffs' fee petition, is 334 hours. The total lodestar for my firm at \$360/hour (Richard M. Kerger) is \$116,820.00 and at \$225/hour (Kimberly A. Conklin) is \$2,136.50. Ex. 2. Expense items are billed separately and are not duplicated in my firm's lodestar.

8. The expenses my firm incurred in litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, invoices, receipts, check records, and other source materials and accurately reflect the expenses incurred. My firm's expense records are available for inspection by the Court if necessary.

9. My firm incurred a total of \$8,066.76 in unreimbursed expenses, all of which were reasonable and necessary for the prosecution of this litigation. Of this amount, \$7,600.00 was for assessment payments for common litigation expenses or direct payments to experts or other vendors made at the request of Class Counsel, and an additional \$466.76 was for non-common litigation expenses incurred by my firm, such as travel, meals and lodging, copying, legal research, telephone, etc. A summary of those expenses by category is attached as Exhibit 3.

10. In the event my firm provides additional services or incurs additional costs, I will supplement this declaration.

I declare under penalty and perjury that the foregoing is true and correct. Executed this 10th

day of October, 2022, in Toledo, Ohio.

s/ Richard M. Kerger
RICHARD M. KERGER

EXHIBIT 3

RICHARD M. KERGER

Professional Experience

Richard M. Kerger was one of the founding partners in the law firm of Kerger & Kerger, now The Kerger Law Firm, LLC, located in Toledo, Ohio where he specializes in trials and appeals. Before that he was a partner in the firm of Marshall & Melhorn, also located in Toledo. He joined that firm as a trial lawyer and came to head the firm's Litigation Department. He also served as a managing partner of the firm for nearly 20 years. Before coming to that firm he served as a law clerk for Chief Judge Thomas D. Lambros of the United States District Court for the Northern District of Ohio. He served in the United States Air Force and while in college, he served as legislative correspondent, city editor and editor of The Ohio State Lantern.

Business Experience

He was one of three Special Directors serving on the Board of Triarc Corporation in connection with the settlement of shareholder litigation. He served for several years as a member of the Independent Review Board of The Medical College of Ohio. He was a member of the Board of Directors on The Fahey Bank in Marion, Ohio. He has also served on the boards of several local businesses.

Professional Activities

He was selected as a fellow of the American College of Trial Lawyers, Litigation Counsel of America, International Society of Barristers and American Board of Trial Advocates. He is a Senior Counsel in The College of Master Advocates and Barristers and was elected a Fellow in the American Board of Criminal Lawyers. He is a member of the Million Dollar Advocates Forum. He is a member of the Ohio State and Toledo Bar Foundations. He is a Life Member of the Sixth Circuit Judicial Conference and was Chair of the Life Member Advisory Committee. He was a member of the Board of Governors of the Ohio State Bar Association, having previously served as Chairman of its Federal Courts and Practice Committee. He was a member of the Board of Trustees of the Toledo Bar Association and chaired both its Federal Courts and Grievance Committees. He is recognized by Corporate Counsel as one its Top Lawyers in America. He is listed in the 2019 edition of The Super Lawyers and The Best Lawyers in America in the fields of Bet-the-Company Litigation, Commercial Litigation, Complex Litigation, First Amendment, Construction Litigation, Labor and Employment, White-Collar Criminal Defense and General Criminal Litigation. He is described in the international legal resource Chambers and Partners as a lawyer to handle "cases involving serious risk to organisations or their members, be the risk civil or criminal." He is further described in that same publication as "a well-thought of lawyer whose experience includes product liability and patent cases." He has served as an Adjunct Professor at the University of Toledo College of Law teaching Litigation - Strategy & Tactics. He is the author of the novel When You Practice to Deceive and the nonfiction books The Art of Being a Trial Lawyer, The Client's Guide to Litigation and a co-author of Commercial Litigation in Ohio. He has also been selected as one of Ohio's Super Lawyers by Cincinnati Magazine since 2004. He lectures and writes on legal topics for a variety of organizations and publications.

KIMBERLY A. CONKLIN

PROFESSIONAL EXPERIENCE

Kimberly A. Conklin is an experienced civil litigator with emphasis in commercial litigation and employment law. She is licensed to practice in the State of Ohio (Admitted May 2002). Additionally admitted to practice before the United States Supreme Court, the United States Sixth Circuit Court of Appeals, the United States District Courts for the Northern District of Ohio, Southern District of Ohio and the Eastern District of Michigan.

PROFESSIONAL HISTORY

Kimberly attended her undergraduate studies at the Bowling Green State University. She was commissioned as a Second Lieutenant in the United States Army immediately after graduation and served the next four years as a platoon leader and executive officer of a Patriot Missile Battery based at Fort Bliss, Texas.

Kimberly graduated in the top third of her class at the University of Toledo College of Law in 2001. She was a member of the moot court team and participated in the Wechsler First Amendment Competition, American University, Washington D.C. While in law school Kimberly spent two years as an intern for the City of Toledo, Ohio's employment and labor attorney and actively participated in labor negotiations with several of the city's employee associations.

Beginning in 2001 Kimberly served as a staff attorney for the Honorable Thomas F. Bryant of the Ohio Third District Court of Appeals in Lima, Ohio. During her two years in this positon she managed a docket of three appellate cases per week and drafted nearly 100 opinions on both civil and criminal matters.

Kimberly joined the firm of Kerger & Kerger in May 2003, now The Kerger Law Firm, LLC. Over the course of the last nineteen years Kimberly has represented both employers and employees in various Title VII, FMLA, ADEA, ADA, ERISA and FLSA matters in Federal and State courts as well as the EEOC, OCRC and SERB. Kimberly currently acts as outside council for a local teachers association where she provides representation for labor arbitrations, grievance hearings, unfair labor practices and outside civil litigation.

In addition to her employment practice, in the routinely represents clients in commercial disputes in both Federal and State courts to include contract actions, trade secret disputes, construction claims and professional malpractice. Kimberly also has experience in personal injury cases and has volunteered her time on pro bono cases in various domestic matters. Kimberly has tried cases in both State and Federal courts and has argued numerous cases before the United States Sixth Circuit Court of Appeals.

PROFESSIONAL AFFILIATIONS

Kimberly is a member of the Toledo Bar Association where she serves on the Grievance Investigation Committee, the Federal Court Committee and the Litigation Committee. Kimberly is also a member of the Ohio State Bar Association, Litigation Section and has served on the Employment Law Section Counsel.

Kimberly was appointed to the Sylvania City School's Board of Education in November 2020. In November 2021 she was elected to complete the term of the seat to which she was appointed.

EXHIBIT 2

THE KERGER LAW FIRM, LLC
Summary by Timekeeper and Activity

<u>Attorney</u>	<u>Rate</u>	<u>Hours</u>	<u>Loadster</u>
Richard M. Kerger	\$360.00	324.50	\$116,820.00
Kimberly A. Conklin	\$225.00	9.50	\$ 2,137.50
			\$118,957.50

EXHIBIT 3

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<u>Expense</u>		<u>Qty/Price</u>
7/31/2020 - RMK Filing Fee - Southern District (Cincinnati)	1 400.00	400.00
8/27/2020 - BM Postage to Clerk of Courts	1 7.75	7.75
11/24/2020 - RMK Postage charge.	1 4.40	4.40
3/23/2021 - RMK Postage charge.	1 0.71	0.71
5/14/2021 - RMK Expert fee.	1 3,500.00	3,500.00
6/1/2021 - RMK Filing Fee - Pro Hac Vice - Eric J. Marcy	1 200.00	200.00
7/26/2021 - RMK Westin Hotel charge - mediation.	1 287.70	287.70
- RMK Travel to Cleveland for mediation.	250 0.56	140.00

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		Qty/Price	Amount
7/26/2021 -	RMK Uber fee - Mediation travel.	1 20.00	20.00
1/19/2022 -	RMK Copy Charges (62 @ \$.10)	62 0.10	6.20
4/7/2022 -	RMK Rate Payer Fund payment	1 3,500.00	3,500.00
SUBTOTAL:			[8,066.76]
Total costs			\$8,066.76